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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,669	01/11/2002	Alfonso Losada	SAS/33	8368
498	7590	12/02/2005	EXAMINER	
JAMES R. CYPHER 405 14TH STREET SUITE 1607 OAKLAND, CA 94612			SAETHER, FLEMMING	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 12/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/043,669

Applicant(s)

LOSADA, ALFONSO

Examiner

Flemming Saether

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-52 is/are pending in the application.
- 4a) Of the above claim(s) 6,7,13,17,18,24 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,8-12,14-16,19-23,25 and 27-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restriction

Claims 6, 7, 13, 17, 18, 24 and 26, remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) based on the applicant's election filed 6 December 2004.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the plurality of unattached plates (claim 20) must be shown or the feature canceled from the claim as well as the plate being collapsed (claims 14 and 160. No new matter should be entered. Applicant is reminded that drawing correction must be submitted and labeled as replacement sheets.

Specification

The disclosure is objected to because of the following informalities: it does not include antecedent basis for the claimed subject matter in particular, the raised portion collapsing (claims 14 and 16).

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14, 16-19, 33 and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 14 and 17 are indefinite because the article is claimed as being in two different states that cannot coexist. Specifically, the plate is claimed as being both raised and collapsed which cannot coexist thus it is unclear if applicant intends to claim the plate in the raised condition or in the collapsed condition. Along the same lines, there is no antecedent basis for the stud being driven and any driving of the stud is a method limitation which would be improper in an article claim. The claims were interpreted as best understood wherein the plate is in the raised condition which is adapted to be collapsed.

Claim Rejections - 35 USC § 102

Claims 1, 3-5, 8, 9, 10-12, 14, 15, 16, 19 and 29-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Magyar (US 3,828,925). Magyar discloses a fastener assembly comprising a plate (2) in combination with a stud (12); the plate having a bearing surface (the lower surface as seen in the Figs.) and an opposite top surface with the stud positioned therein such that its head is located significantly above the top surfaces so as to be received within the barrel of powered actuator (14). The plate having a guide means as an extending portion below the bearing surface (as provided between grooves 22) with the groove (22) corresponding thereto; an attachment leg (4) is oriented perpendicular to the plate and parallel to the extending portions (see the embodiment of Fig. 3); the plate comprises a raised portion (18) in the

form of a cylinder (see Fig. 5) which holds the stud and incorporates a plurality of grooves (16) which assist to collapse the raised portion upon actuation of the stud. In Fig. 8, the stud is shown extending below the bearing surface (note the phantom line). Since the claims are directed to a "fastener assembly", the guide means for being received within a track is considered merely an intended use of which the prior art is capable. Fig. 3 of Magyar discloses the groove to extend the length of the bearing surface and also when combined with the showing of Fig. 1 discloses them to be parallel with the attachment leg. Also, since the plate is made of polystyrene it would have at least some flexibility to form a raised portion which is capable of being collapsed.

Claims 20, 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable Francis (US 4,903,831). Francis discloses a fastener assembly feeding system comprising a plate (10); a stud (80) held within the plate; an extending portion formed on the plate (the portion between steps 9 as seen in Fig. 3); a feeding track (14) having a mating portion to receive the extending portion (see Fig. 11a); whereby, in operation, the fastener being guided along the track. The extending portion includes a groove (at steps 9) and there is raised portion (the upper tapering portion as seen in Fig. 3).

Claim Rejections - 35 USC § 103

Claims 20, 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable Francis (US 4,903,831). Francis discloses a fastener assembly feeding system

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comprising a plate (10); a stud (80) held within the plate; an extending portion formed on the plate (the portion between steps 9 as seen in Fig. 3); a feeding track (14) having a mating portion to receive the extending portion (see Fig. 11a); whereby, in operation, the fastener being guided along the track. The extending portion includes a groove (at steps 9) and there is raised portion (the upper tapering portion as seen in Fig. 3). In Francis the prior art discloses individual, unattached, plates. Therefore, at the time the invention was made, it would have been obvious for the person of ordinary skill in the art to use individual unattached plates in combination with the feeder since they are the same shape to fit within the feeder track and would be convenient if the strips were unavailable and would even be more economical by not requiring the extra material used to form the connector pieces.

Claims 20-23 and 49-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Magyar in view of Francis. Magyar discloses a fastener assembly having features as described above but, does not disclose the fastener assembly son combination with a feeding track. Francis discloses a fastener assembly in combination with a feeding track having a complementary shape also as described above. At the time the invention was made, it would have been obvious for one of ordinary skill in the art to provide Magyar with a feeding track as disclosed in Francis such that a plurality of fastening assemblies would be automatically loaded into the actuating gun for a more efficient operation.

Response to Remarks

Applicant first argues the claims cannot be anticipated by anticipated Magyar (US 3,828,925) because Magyar fails to show the groove corresponding to the extending portion where the extending portion extends from the bearing surface. In response, this argument is not fully understood because applicant is not specific as to how or why Magyar fails to the structure and thus is not in compliance with 37 CFR 1.111(b). That notwithstanding, the examiner believes the reference to Magyar does in fact teach all the features of the claims including the alleged deficiencies. Applicant is reminded that the claims are required to be given their broadest reasonable interpretation. That this in mind, Magyar discloses an extending portion (38) extending from a bearing surface (30) including grooves (located between the extending portions and bounded by the extending portion and bearing surface) and these grooves are "corresponding" in location to the extending portions.

The claims were none the less amended to require the grooves extend the length of the bearing surface which applicant contends is clearly not disclosed in Magyar, citing figure 5. In response, the examiner disagrees for three reasons. First, the claims do not have any limitation with regards to the "bearing surface" thus the "bearing surface" of Magyar could simply be read so as to meet the limitation of the grooves extending the length of the "bearing surface"; second, Fig. 5 is only a partial section thus is not indicative to the length of the grooves; and finally, applicant's attention is directed to

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Magyar's Fig. 3 which shows the grooves (as indicated by the phantom lines) extending the length of the bearing surface.

Applicant argues, in regards to claims 4 and 28, that Magyar does not disclose the extending portion parallel to the plane of an attachment leg. Though the applicant is again not specific in how the language distinguishes over Magyar, applicant's attention is again directed to Fig. 3 which when taking in conjunction with Fig. 1 orientation the extending portions (as indicated by the phantom lines in Fig. 3) being parallel to the attachment leg (4 in Fig. 1).

Applicant next argues that Magyar fails to meet the limitation of claim 11 since the examiner has not demonstrated identified the bearing surfaces thus has not demonstrated "an extending portion extending from the bearing surface". In response, as noted by applicant, the "bearing surface" has been indicated as being the lower surface of Magyar's plate since the feature is lacking a reference numeral but, the reference numeral 30 may be taken to point to the bearing surface when it is taken as being inclusive of all location between each of the extending portion (28). Therefore, when the bearing surface is taken as just described and considered in conjunction with the extending portions as shown in Magyar's Figs. 7 and 8 it can clearly be understood how the extending portions are extending from the bearing surface.

Applicant next describes the claim 14 has been amended to more specifically describe the raised portion. In that regard, the amendment to claim 14 has necessitated a new rejection under section 112 as described above and also as discussed, the examiner is of the opinion that Magyar continues to anticipate claim 14 even as amended also as discussed above. Specifically, since the plate of Magyar is preferred to be made of plastic it would have some flexibility so as to be capable of being both the raised and the collapsed.

Applicant argues claim 34 defining over Magyar but, adds no new arguments not addressed previously thus no further response is believed necessary.

Applicant argues that claim 12 defines over Magyar since Magyar allegedly does not disclose the claimed guide means. The applicant is again not specific as to how or why Magyar fails to disclose a guide means but, in responding the examiner disagrees because nearly any feature of Magyar, including the grooves, would be capable of capable of guiding the plate within a track and would be an obvious equivalent to the "guide means" disclosed by applicant should applicant choose to argue 112 6th paragraph in view of In re Donaldson.

Also in regards to claim 12, applicant again argues the grooves in Magyar not extending the length of the plate which has been addressed in regards to claim 1, thus no further response is believed necessary.

The same goes for applicant's arguments of claims 15, 41, 16 and 47 all of which have been answered above.

Applicant's arguments in regards to the claims, as amended, defining over Francis are moot in view of the new grounds of rejection.

Applicant's remarks in regards to the 103 rejection does not add any new arguments not addressed above therefore, no further response is believed necessary.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 703-308-0182. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Flemming Saether
Primary Examiner
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